No. 88-537

(2)

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1988

PATRICK W. PRICE,

Appellant,

v.

THE CITY OF SAN MARCOS, TEXAS; EMMIE CRADDOCK, MAYOR; BILL CODDINGTON, COUNCIL MEMBER; GERALD FARR, COUNCIL MEMBER; FRED GUERRA, COUNCIL MEMBER; BETTY JANE KISSLER, COUNCIL MEMBER; GILBERT FULMER, ETHICS REVIEW COMMISSION CHAIRMAN; ORPHA BAZAN, ETHICS REVIEW COMMISSIONER; RICHARD HENDERSON, ETHICS REVIEW COMMISSIONER; MARY HELEN MOORE, ETHICS REVIEW COMMISSIONER; W. B. PRYATEL, ETHICS REVIEW COMMISSIONER; and STANLEY SISSOM, ETHICS REVIEW COMMISSIONER,

Appellees.

On Appeal from the Supreme Court of Texas

MOTION TO DISMISS OR AFFIRM

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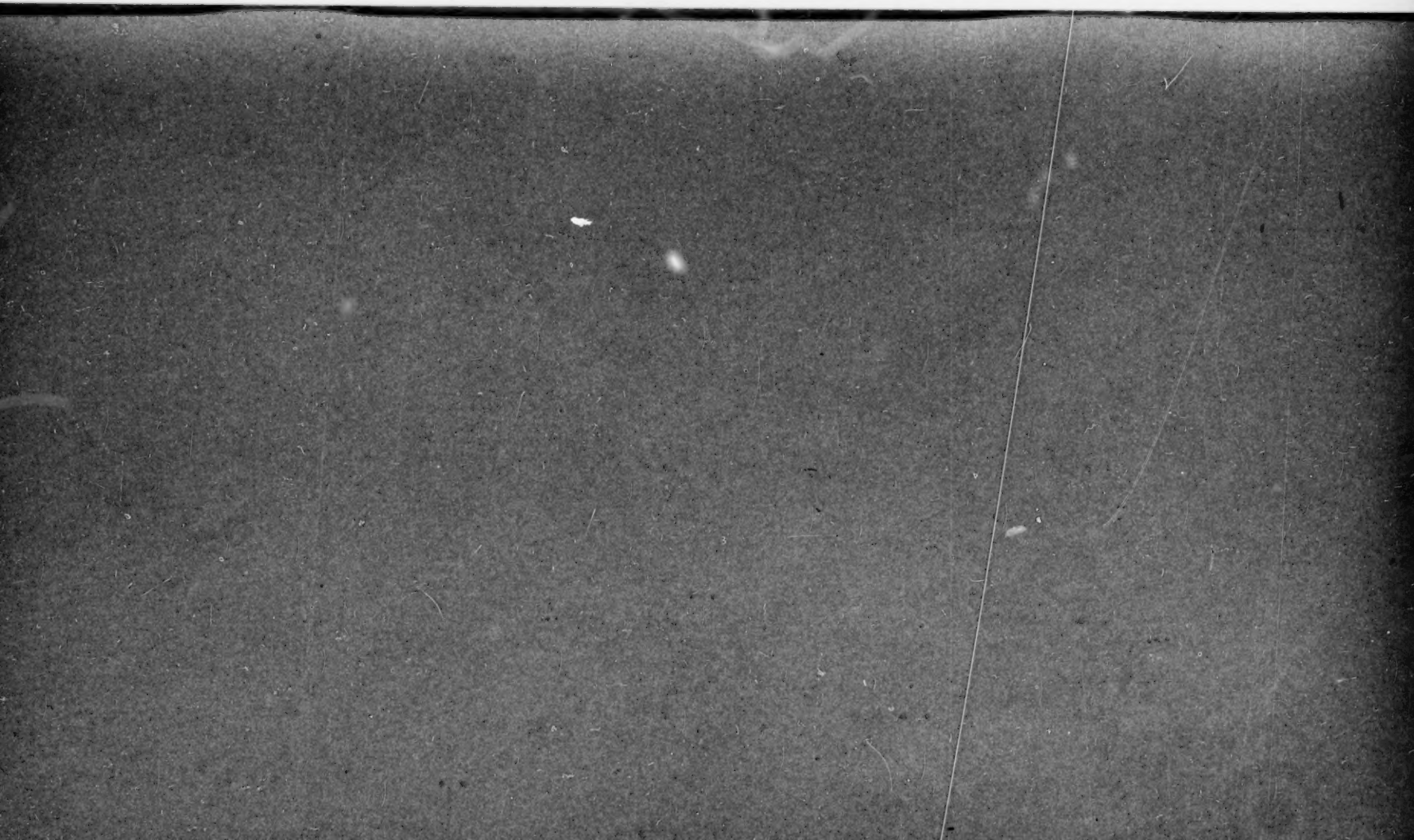

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IN THE

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OCTOBER TERM, 1988

No. 88-537

PATRICK W. PRICE,

Appellant,

v.

THE CITY OF SAN MARCOS, TEXAS, *et al.*,

Appellees.

On Appeal from the Supreme Court of Texas

MOTION TO DISMISS OR AFFIRM

Appellees respectfully move the court to dismiss this appeal or to affirm the Texas court's judgment on the following grounds:

1. The Question Presented is not within the Court's appeal jurisdiction, and, since Price's First Amendment argument was resolved in the courts below by an interpretation of state law, the case is not within writ of certiorari jurisdiction;

2. The Texas court's decision does not present a substantial federal question;

3. The Texas court's decision is in conformity with prior decisions of this Court.

STATEMENT OF FACTS

Appellant Patrick W. Price was an appointed member of the Planning and Zoning Commission for the City of San Marcos ("City"). City's Code of Ethics contained an ordinance prohibiting an official in Price's position from appearing before any other city agency. *See* Jurisdictional Statement 3. Price's individual appearance before City's Board of Adjustment to request personal zoning changes led City's Ethics Review Commission to recommend to the City Council that Price be removed from the commission. *See* Jurisdictional Statement Exhibit D-1. The reason for the commission's recommendation, which the City Council adopted, was explained in the deposition of the Chairman of the Ethics Commission:

> Q. In Mr. Price's case, you did feel it was serious enough to warrant his removal from the Planning Commission?
>
> A. What we felt was serious enough to warrant it—and I think it's important to make this clear—was that Mr. Price not only violated the ordinance, but that he insisted that it was permissible for him to do so. We had had prior cases in which we had people who had violated the ordinance inadvertently, admitted to having done so, apologized and assured us that they would never do it again and we felt that the apology and the promise not to repeat was sufficient.
>
> In this case, *we were concerned with setting a precedent in which members of the city government would feel that they were not bound by the City's ordinance.* (Deposition of Gilbert Fulmer; emphasis added).[1]

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[1] The mayor testified that one of Price's two violations did not figure into the city council's decision, because the council had already decided to amend the ethics ordinance to permit an official's appearance concerning homestead property. (Deposition of Emmie Craddock). The amended ordinance, which demonstrates the nonrecurring nature of that part of the controversy, is printed as Exhibit D-3 in the Jurisdictional Statement.

Price sued City and members of the Ethics Review Commission and the City Council claiming that he was entitled to damages for defamation and civil rights violation and to reinstatement on the commission.

Although it is the role of the Ethics Ordinance (vis-a-vis First Amendment rights) that supposedly vests this court with appeal jurisdiction under 28 U.S.C. § 1257(2), Price's trial pleading said:

> Plaintiff does not complain of the City's Code of Ethics as written. Plaintiff would show, however, that with respect to representation of oneself before the Board of Adjustment, the prohibition against pro se representation contained in . . . the Code of Ethics . . . *does not apply as a matter of State law.* (Tr. 162; emphasis added).

With regard to the First Amendment, Price pleaded only the conclusion that the City's action in removing him from the City Planning Commission "denied him his right to freedom of speech." (Tr. 167). Price identically confined his position in reply to City's motion for summary judgment:

> Plaintiff does not seek to have the City's Code of Ethics as written, or any part thereof as written, declared unconstitutional. Plaintiff's contention is that Defendants have erroneously, improperly and unlawfully applied an otherwise valid ordinance to Plaintiff under the undisputed facts and circumstances of this case. (Tr. 176).

Relevant excerpts from Price's trial pleading are printed as Appendix A to this motion.

As demonstrated by Price's statement of the Question Presented, the case that Price articulated in the Texas appellate courts likewise did not question the validity of the ethics ordinance on First Amendment grounds.[2] In-

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[2] As indicated in the intermediate court's opinion (Jurisdictional Statement Exhibit B-1), Price questioned his removal from the Commission in terms of due process and equal protection, but those questions are not presented here.

stead, Price argued in the appellate courts that City incorrectly interpreted or improperly applied the ethics ordinance in contravention of a state statute generally authorizing appearances before the Board of Adjustment. Relevant excerpts from Price's briefs to that effect are printed as Appendices B and C to this motion.

In the intermediate court (who issued the only written opinion), Price's entire briefing on the point that "City's actions denied Price his right of free speech," consisted of the following:

> The right to petition for redress of grievances, presumably including a right to appeal a zoning decision of the local administrators to the Board of Adjustment, is intimately connected with the origin and purpose of the freedom of speech constitutionally guaranteed by the U.S. Const. amend. I and Tex. Const. art. I, § 8. While we are aware of the cases cited by the City for the proposition that the government can place certain limits on the speech of its officials and employees in furtherance of legitimate governmental interests, we would submit that there can be no legitimate interest served by the City *in denying one a right statutorily granted by the State of Texas.* (Emphasis added).[3]

Thus, Price invoked the First Amendment only on the condition that application of the ordinance denied a state statutory right. According to Price in the courts below, state law, if correctly interpreted, precluded applicability of the ordinance to his conduct, and City's reliance on an ordinance rendered inapplicable by state law violated a First Amendment right. The Texas courts held, however, that Price was wrong about state law concerning the asserted ordinance-statute conflict: "[T]he effect of the City's decision, however, was not to deny Price his statu-

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[3] Price's First Amendment briefing in the Supreme Court of Texas, which denied Price's application for writ of error without issuing an opinion, expanded the argument only slightly.

tory right. . . ."[4] *See* Jurisdictional Statement Exhibit B-1 at App. 5.

ARGUMENT

I. The Question Presented Is Not Within The Court's Appeal Jurisdiction, And, Since Price's First Amendment Argument Was Resolved In The Courts Below By An Interpretation Of State Law, The Case Is Not Within Writ Of Certiorari Jurisdiction.

The Question Presented in Price's Jurisdictional Statement is:

> Did the courts below err in holding that appellant Price's First Amendment rights to freedom of speech and to petition for redress of grievances were not violated by the City's action in removing Price from office, pursuant to its "ethics" ordinance, for appearing and speaking before a quasi-judicial body to seek zoning variances on his own property?

Price correctly refrained from characterizing the question as whether the Texas courts erred in upholding the validity of the ordinance against a First Amendment attack. Since Price did not make such an attack, the Question Presented is not within the appeal jurisdiction granted by 28 U.S.C. § 1257(2).

It is essential to the appeal jurisdiction cited by Price that there be an explicit insistence in the state court that a city ordinance is repugnant to the federal Constitution. *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 562 n.4, 100 S. Ct. 2814, 2820 n.4, 65 L.Ed.2d 973, 980 n.4 (1980). Appeal jurisdiction is absent here not merely because Price failed to so insist but because, as

---

[4] Although this holding was expressed in response to one of Price's due process arguments, it necessarily resolved the question of state law interpretation that Price's brief depicted as "a key issue in this lawsuit." *See* App. B.

noted in the Statement of Facts, Price explicitly disavowed a claim of constitutional invalidity.[5]

Rather than contending that the ordinance was repugnant to the First Amendment, Price argued unsuccessfully that City acted in reliance on an ordinance that was repugnant to a state statute. But, " 'an attack on lawless exercise of authority in a particular case is not an attack upon the constitutionality of a statute conferring the authority. . . .' " *Richmond Newspapers, Inc. v. Virginia*, *supra* (quoting *Phillips v. United States*, 312 U.S. 246, 252, 61 S. Ct. 480, 484, 85 L.Ed. 800, 805 (1941)). Price failed to explicitly attack the constitutional validity of the ordinance in the proceedings below, and the Question Presented in Price's Jurisdictional Statement does not even contemplate a holding within appeal jurisdiction. These circumstances require dismissal of the appeal. *See id.; Charleston Fed. Sav. & Loan Ass'n*, 325 U.S. 182, 187, 65 S. Ct. 624, 627-28, 89 L.Ed. 857, 861-62 (1945).

Moreover, Price's case does not reach petition for writ of certiorari jurisdiction, because Price did not contend in the lower courts that City's removal in reliance on a *state-valid* ordinance deprived him of a First Amendment right. *See Cardinale v. State of Louisiana*, 394 U.S. 437, 438, 89 S. Ct. 1161, 22 L.Ed.2d 398, 400 (1969) (jurisdiction absent with respect to federal question first presented in this Court). All of Price's arguments in the lower courts, including his First Amendment assertion conditioned on ordinance-statute conflict, were resolved by the Texas court's determination that the ordinance was not in conflict with the statute.

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[5] The facts leave no room for a significant distinction between facial invalidity and possible invalidity "as applied" to Price. Price's complaint about the ordinance applies "across the board." By its terms, the ordinance could not be applied to Price any differently than it could be to any other city official. Thus, in the absence of a constitutional challenge to its validity "as written," there is no constitutional challenge to its validity.

The state law question about purported ordinance-statute conflict was an unfulfilled predicate to Price's tangential First Amendment proposition. This Court has no certiorari jurisdiction to review the state law determination that eliminated a link presumed by Price's First Amendment argument to be present. *See Hortonville Joint School Dist. No. 1 v. Hortonville Education Ass'n*, 426 U.S. 482, 488, 96 S. Ct. 2308, 49 L.Ed.2d 1, 7 (1976) (Court bound by highest state court's interpretation of state law). Since Price's First Amendment reliance was conditioned on a different resolution of the state law question, "[t]he case, in effect, was disposed of before the federal question said to be involved was reached." *Fox Film Corp. v. Muller*, 296 U.S. 207, 210, 56 S. Ct. 183, 80 L.Ed. 158, 160 (1935). Since resolution of the state law question made consideration of Price's First Amendment claim unnecessary, the case is not within certiorari jurisdiction. *Id.*

II. The Texas Court's Decision Does Not Present A Substantial Federal Question.

As demonstrated by the foregoing, Price's discussion under "Substantial Nature of Question Presented" describes a case different from the one put to the Texas courts. Part A under that heading addresses a "constitutional right to appear and speak before the Zoning Board of Adjustment" and suggests that the very enactment of the ordinance abridged a right of free expression in that respect. Price's posture in the courts below was just the opposite. He disclaimed a challenge to the validity of the ordinance and stated that he did not "question the City's general purpose in adopting and enforcing the Ethics Ordinance." *See* Appendices A, B and C. Certainly to this extent, jurisdiction fails because, clearly, the supposed unconstitutionality of the ordinance itself is being raised here for the first time. *See Cardinale v. State of Louisiana, supra.*

In any event, the sanctity of the right to speak and to petition is not at issue The state Board of Adjustment statute enables the exercise of those rights, and the ordinance does not thwart it. This case is in no way analogous to the fundamentally infringing anti-sedition oath and patronage discharge practice that were stricken respectively in *Keyishian v. Board of Regents*, 385 U.S. 589, 87 S. Ct. 675, 17 L.Ed.2d 629 (1967) and *Elrod v. Burns*, 427 U.S. 347, 96 S. Ct. 2673, 49 L.Ed.2d 547 (1976).

The actual right claimed by Price to have been abridged is far narrower than the First Amendment rights to speak, to petition the government and to obtain access to courts. Indeed, it is not a right of constitutional dimension. Price's argument, of course, operates under an assumption that the First Amendment guarantees a right to appear *pro se* before a civil administrative agency. In support of that assumption, Price cites *Faretta v. California*, 422 U.S. 806, 95 S. Ct. 2525, 45 L.Ed.2d 562 (1975), in which the court held that a defendant in a criminal case has a right under the Sixth Amendment to conduct his own defense. Obviously, that is an altogether different matter. Based on the discussion in *Faretta*, the Fifth Circuit correctly held in *Eitel v. Holland*, 797 F.2d 995 (5th Cir.), *modified on other grounds*, 798 F.2d 815 (5th Cir. 1986), that there is no due process right "to represent oneself in a civil case." *Id.* at 998. *See also Andrews v. Bechtel Power Corp.*, 780 F.2d 124, 137 (1st Cir. 1985), *cert. denied*, 476 U.S. 1172 (1986) ("There is no constitutional right to self-representation in civil cases").

A decision on which even Price relies, *California Motor Transp. Co. v. Trucking Unlimited*, 404 U.S. 508, 92 S. Ct. 609, 30 L.Ed.2d 642 (1972), explains that the Constitution guarantees "right of access to agencies and courts, *within the limits, of course, of their prescribed procedures* . . ." (emphasis added). *Id.*, 404 U.S. at 515,

92 S. Ct. at 614, 30 L.Ed.2d at 648. The Question Presented is not a substantial federal question, because it is based on a purported right that is not afforded by the First Amendment.

III. The Texas Court's Decision Is In Conformity With Prior Decisions Of This Court.

City's ethics ordinance did not at all proscribe the exercise of First Amendment rights. For the purpose of avoiding conflicts of interest and the appearance of impropriety and self-dealing, the ordinance placed a fair and reasonable restriction only on the method by which those rights are exercised. Contrary to Price's argument, the methods of exercising a First Amendment right to seek redress are not inherently free from procedural restrictions or "balancing" factors. In *California Motor Transp. Co. v. Trucking Unlimited*, *supra*, the court recognized not only that the constitutional "right of access to agencies and courts" was subject to forum procedure, but also that the First Amendment right itself was not immunized from regulation that furthered a legitimate government interest. Anti-trust violations committed through repetitive baseless petitions were held to be actionable despite the broad First Amendment right to seek agency redress. *Id.*, 404 U.S. at 514, 92 S. Ct. at 613, 30 L.Ed.2d at 648.

Price correctly observes that, as held in *McCoy v. Goldin*, 598 F. Supp. 310 (S.D. N.Y. 1984), the fundamental right to petition the government was not at issue in *Connick v. Myers*, 461 U.S. 138, 103 S. Ct. 1684, 75 L.Ed.2d 708 (1983). The ordinance, however, simply did not deprive Price of his right to petition. In fact, the ordinance could have deprived him of no more than a non-constitutional statutory right to represent himself, and the Texas court held that the ordinance did not even deny a statutory right. All that remains, therefore, is Price's general claim that City wrongfully removed him

for exercising the right to speech. For that reason, the Texas court correctly applied the *Connick* criteria.

In this context of a relationship between a public employee's speech and termination of employment, the *Connick* distinction between speech of private and public concern and the *Connick* balancing of public concerned speech against the government employer's interest are determinative.[6] The Texas court held that Price's speech about his own property was a matter of private concern. Based on "the content, form, and context . . . as revealed by the record as a whole," that decision was correct, and there was no need to reach the balancing test. *Id.*, 461 U.S. at 147-48, 103 S. Ct. at 1690, 75 L.Ed.2d at 720.

Even if, as Price contends, his speech about personal zoning requests was a matter of public concern, the lower court balanced state interests in a due process discussion that effectively applied the *Connick* test. Jurisdictional Statement Exhibit B-1 at App. 4. With respect to speech concerning public matters, according to *Connick*, the First Amendment requires a balancing of the employee's right to speak freely and the government employer's interest in the "effective and efficient fulfillment of its responsibilities to the public." 461 U.S. at 150, 103 S. Ct. at 1692, 75 L.Ed.2d at 719-22. In *Rankin v. McPherson*, 483 U.S. ——, 107 S. Ct. 2891, 97 L.Ed.2d 315 (1987), the balancing factors were recently reiterated:

> We have previously recognized as pertinent considerations whether the statement impairs discipline by superiors or harmony among coworkers, has a detrimental impact on close working relationships for which personal loyalty and confidence are necessary,

---

[6] Price's discussions of the role of state interest in other contexts (Part C) and the so-called right/privilege distinction (Part D), which the lower court actually employed as a determinant of state law, are either inapplicable or subsumed by *Connick* principles.

> or impedes the performance of the speaker's duties or interferes with the regular operation of the enterprise. (Citation omitted).
>
> These considerations, and indeed the very nature of the balancing test, make apparent that the state interest element of the test focuses on the effective functioning of the public employer's enterprise. Interference with work, personnel relationships, or the speaker's job performance can detract from the public employer's function; avoiding such interference can be a strong state interest.

Id. at 97 L.Ed.2d 327.

By definition, government ethics codes go to the very heart of the state interest described in *Connick*: "effective and efficient fulfillment of [a government's] responsibilities to the public." The Ethics Review Commission recommended Price's removal to avoid "setting a precedent in which members of the city government would feel that they were not bound by the City's ordinance." City clearly established in the lower courts that its removal of Price from the commission was based on an overriding state interest recognized in *Rankin*.

CONCLUSION

The Question Presented in this appeal is not within the court's jurisdiction. In any event, Price has not presented a substantial federal question worthy of review. Appellees respectfully pray, therefore, that the appeal be dismissed or that the judgment of the lower court be affirmed.

Respectfully submitted,

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APPENDICES

APPENDIX A

IN THE DISTRICT COURT
OF HAYS COUNTY, TEXAS
274TH JUDICIAL DISTRICT

No. 14,532

PATRICK W. PRICE

vs.

THE CITY OF SAN MARCOS, TEXAS, *et al.*

PLAINTIFF'S FIRST AMENDED PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES PATRICK W. PRICE, Plaintiff in the above styled and numbered cause, and files this his Plaintiff's First Amended Petition complaining of and against the CITY OF SAN MARCOS, TEXAS, . . .

* * * *

V.

Plaintiff does not complain of the City's Code of Ethics as written. Plaintiff would show, however, that with respect to representation of oneself before the Board of Adjustment, the prohibition against pro se representation contained in Sec. 2-73(b)(1) of the Code of Ethics of the City of San Marcos does not apply as a matter of State law. Boards of Adjustment are governed by the provisions of TEX. REV. CIV. STAT. ANN. Art. 1011g, one of the series of statutes comprising the Texas zoning

enabling legislation. Section (f) of Art. 1011g provides as follows:

> "(f) The Board of Adjustment shall fix a reasonable time for the hearing of the appeal, give public notice thereof, as well as due notice to the parties in interest, and decide the same within a reasonable time. *Upon the hearing any party may appear in person or by agent or by attorney.*" (emphasis added)

Plaintiff would show that the right of any party in a proceeding before the Board of Adjustment to appear in person to represent his own property interests is a statutorily granted right. The Defendants' interpretation and application of the Code of Ethics is in conflict therewith and such application to Plaintiff is prohibited by TEX. REV. CIV. STAT. ANN. Art. 1165 and Art. XI, § 5 of the Texas Constitution. Plaintiff was removed from office for exercising a statutorily granted right.

* * * *

XI.

Plaintiff would show that in removing him from the City Planning Commission, Defendants were arbitrary, capricious, discriminatory and unreasonable; that Defendants unlawfully deprived him of his liberty interest, his property inteerst or other constitutionally protectible interest in his office; that Defendants denied him his right to equal protection under the laws; and that Defendants denied him his right to freedom of speech.

APPENDIX B

IN THE COURT OF APPEALS
FOR THE THIRD SUPREME JUDICIAL
DISTRICT OF TEXAS
AUSTIN, TEXAS

No. 14,720

PATRICK W. PRICE,
Appellant,

vs.

THE CITY OF SAN MARCOS, *et al.*,
Appellees.

BRIEF FOR APPELLANT

* * * *

SUBPOINT A. Price had a statutorily granted right to represent himself at the Board of Adjustment.

Tex. Rev. Civ. Stat. Ann., Art. 1011a, *et seq*, comprise the Texas Zoning Enabling Act wherein the Legislature expressly conferred the power of zoning on Texas cities. One of the statutes in this series, Art. 1011g, provides for the appointment of a quasi-judicial body known as the Board of Adjustment. The Board of Adjustment is authorized by the statute to grant special exceptions and variances from a city's zoning ordinance under the appropriate circumstances. Matters reach the Board of Adjustment on appeal from the administrative ruling of the officer of the city charged with enforcing the zoning ordinance, typically the building inspector, that a use or structure cannot be permitted because of non-compliance with the strict application of the terms of the zoning ordinance.

The statute prescribes certain procedures to be followed on appeal to the Board of Adjustment. Section (f) of Art. 1011g provides as follows:

> (f) The Board of Adjustment shall fix a reasonable time for the hearing of the appeal, give public notice thereof, as well as due notice to the parties in interest, and decide the same within a reasonable time. *Upon the hearing any party may appear in person or by agent or by attorney.*

(Emphasis added.)

Price submits to this Court that the last sentence of Section (f) of Art. 1011g confers upon him, and any other property owner who may take an appeal to the Board of Adjustment, a right to self-representation before the Board with respect to his own property. Price's appearances before the Board of Adjustment were an exercise of that statutory right.

The Court's interpretation of Section (f) of Art. 1011g is a key issue in this lawsuit.

* * * *

SUBPOINT B. The City's interpretation and application of its Ethics Ordinance to Price is contrary to State law and therefore legally erroneous.

* * * *

It is a well known principle of Texas municipal law that a city charter or ordinance provision may not be inconsistent with the laws of the State. Tex. Rev. Civ. Stat. Ann., Art. 1165; Tex. Const. art. XI, § 5.

The City's interpretation and application of the above cited provisions of its Ethics Ordinance have the effect of denying one the right of self-representation provided for by Tex. Rev. Civ. Stat. Ann., Art. 1011g(f) in Board of Adjustment proceedings. The City's application of that prohibition to Price under the facts of this case is therefore legally impermissible. With respect to repre-

sentation of oneself before the Board of Adjustment, the prohibition against *pro se* representation contained in Sec. 2-73(b)(1) of the City Code does not apply as a matter of State law.

Price does not complain of the City's Ethics Ordinance as written. Indeed, the Ethics Ordinance as written contains language contrary to the City's application of the ordinance in this case.

* * * *

. . . Price does not question the City's general purpose in adopting and enforcing the Ethics Ordinance . . .

APPENDIX C

IN THE SUPREME COURT OF TEXAS

No. C-7320

PATRICK W. PRICE,

Petitioner

v.

THE CITY OF SAN MARCOS, *et al.*,

Respondents

PETITIONER'S APPLICATION FOR WRIT OF ERROR

* * * *

POINT OF ERROR NO. 1

THE COURT OF APPEALS ERRED IN FAILING TO HOLD THAT THE CITY'S INTERPRETATION AND APPLICATION OF ITS ORDINANCE TO PRICE UNDER THE FACTS OF THIS CASE WERE INCONSISTENT WITH PRICE'S STATUTORILY GRANTED RIGHT OF SELF REPRESENTATION UNDER TEX. REV. CIV. STAT. ANN., art. 1011g AND, THEREFORE, IMPERMISSIBLE AND VOID UNDER TEX. CONST. art. XI, § 5 AND TEX. REV. CIV. STAT. ANN., art. 1165.

* * * *

Argument

The court of appeal's opinion of January 20, 1988, correctly acknowledges that TEX. REV. CIV. STAT. ANN., art. 1011g(f) grants Price a statutory right of self representation before the Board of Adjustment.

TEX. CONST. art. XI, § 5 and TEX. REV. CIV. STAT. ANN. art. 1165, both of which apply even to home-rule cities such as San Marcos, clearly provide that no city charter or ordinance "shall contain any provision inconsistent with" the State Constitution or general laws of the State.

* * * *

There is an obvious inconsistency between TEX. REV. CIV. STAT. ANN., art. 1011g(f) which grants a right of self representation to "any party" to a proceeding before the Board of Adjustment, and the City's interpretation of its ordinance as prohibiting parties to such proceedings who also happen to serve on some city commission from exercising this statutory right. While the City's ordinance may be a well-intentioned ordinance and generally valid, the general prohibition on *pro se* representation must in this instance give way to the superior State law which governs the right of self representation before this particular quasi-judicial City board, the Board of Adjustment. Any such inconsistent interpretation or application is impermissible and void.

* * * *

The City's interpretation and application of the above cited provisions of its ordinance have the effect of denying one the right of self representation provided for by TEX. REV. CIV. STAT. ANN., art. 1011g(f) in Board of Adjustment proceedings. The City's application of that prohibition to Price under the facts of this case is therefore legally impermissible. With respect to representation of oneself before the Board of Adjustment, the prohibition against *pro se* representation contained in Sec. 2-73(b)(1) of the City Code does not apply as a matter of State law.

Price does not complain of the City's ordinance as written. Indeed, the ordinance as written contains language contrary to the City's application of the ordinance in this case.

* * * *

The City's application of the ordinance to Price's *pro se* appearances at the Board of Adjustment is invalid because it is inconsistent with State law. . . . Price does not question the City's general purpose in adopting and enforcing the ordinance . . . .